

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Anne Carlson on January 8, 2010.

The application has been amended as follows:

In the claims, claims 7-9 have been canceled.

Claim 1 (currently amended). 1. A transgenic plant comprising a plant transformation vector comprising a nucleotide sequence that encodes [or is complementary to a sequence that encodes] a DRO3 polypeptide comprising [the] an amino acid sequence having at least 95% sequence identity to [of] SEQ ID NO:2, [or an ortholog thereof,] wherein said DRO3 polypeptide is expressed and wherein said transgenic plant has increased drought tolerance relative to control plants.

Claim 2 (currently amended). The transgenic plant of claim 1 wherein the transformation vector comprises a constitutive promoter that controls expression of the DRO3 polypeptide [or ortholog].

Claim 3 (currently amended). A transgenic plant part obtained from the plant according to claim 1.

Claim 4 (currently amended). The plant part of claim 3, which is a transgenic seed.

Claim 5 (currently amended). A method of producing increased drought tolerance in a plant, said method comprising:

- a) introducing into progenitor cells of the plant a plant transformation vector comprising a nucleotide sequence that encodes [or is complementary to a sequence that encodes] a DRO3 polypeptide comprising [the] an amino acid sequence having at least 95% sequence identity to [of] SEQ ID NO:2, [or an ortholog thereof.] and
- b) growing the transformed progenitor cells to produce a transgenic plant, wherein said [polynucleotide] nucleotide sequence is expressed, and said transgenic plant exhibits increased drought tolerance relative to control plants.

Claim 6 (currently amended). A plant obtained by [a] the method of claim 5.

Claim 10 (new). The transgenic plant of claim 1, wherein the DRO3 polypeptide comprises the amino acid sequence of SEQ ID NO:2.

Claim 11 (new). The method of claim 5, wherein the DRO3 polypeptide comprises the amino acid sequence of SEQ ID NO:2.

Claims 1-6, 10 and 11 are allowed. Claims 7-9 have been canceled because they are drawn to a nonelected invention not rejoined under *In re Ochiai*. The above amendments were made to obviate potential issues under 35 USC 112, first and second paragraphs. Claims 3 and 4 are interpreted by the Office to contain the nucleotide sequence of claim 1.

REASONS FOR ALLOWANCE

2. The following is an examiner's statement of reasons for allowance: The claimed invention is drawn to a drought tolerant transgenic plant expressing a nucleotide

sequence having at least 95% sequence identity to SEQ ID NO:2. The closest prior art teaches SEQ ID NO:2 (Theologis et al., *Nature*, Vol. 408, pp. 816-820, 2000 (Applicant's IDS)). SEQ ID NO:2 was obtained from *Arabidopsis thaliana*. However, the prior art also indicates SEQ ID NO:2 is a hypothetical protein having no known function. One skilled in the art would not be motivated to express an unknown protein of SEQ ID NO:2 in a plant. Accordingly, the claimed invention has utility and is novel, enabled and adequately described.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phuong T. Bui whose telephone number is 571-272-0793.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg can be reached on 571-272-0975. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Phuong T. Bui/
Primary Examiner, Art Unit 1638

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